UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/635,894	08/05/2003	Arnold Stamler	50325-0806	1595

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ART UNIT	PAPER NUMBER
2151	

MAIL DATE	DELIVERY MODE
05/11/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Office Action Summary	Application No.	Applicant(s)
		10/635,894	STAMLER ET AL.
		Examiner	Art Unit	
		John B. Walsh	2151	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____ .

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) _1-57_ is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) _1-57_ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____ .

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____ .

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application

6)☐ Other: _____ .

DETAILED ACTION

Specification

1.   The lengthy specification has not been checked to the extent necessary to determine the

presence of all possible minor errors. Applicant's cooperation is requested in correcting any .

errors of which applicant may become aware in the specification.

Claim Rejections - 35 USC § 101

2.   35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or
> any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and
> requirements of this title.

3.   Claims 22, 23 and 25-33 are rejected under 35 U.S.C. 101 because the claimed invention

is directed to non-statutory subject matter.

Claim 22 recites, "a computer readable medium carrying". This appears to be drawn to a

signal, which is non- statutory subject matter, and thus the claim lacks a proper computer

readable storage medium.

Claim Rejections - 35 USC § 102

4.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the

basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed
> in the United States before the invention by the applicant for patent or (2) a patent granted on an application for
> patent by another filed in the United States before the invention by the applicant for patent, except that an
> international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this
> subsection of an application filed in the United States only if the international application designated the United
> States and was published under Article 21(2) of such treaty in the English language.

5.   Claims 1-7, 9-11, 13-20, 22-28, 30-32, 34-39, 42-44, 46-52 and 54-56 (wherein claims

22, 23 and 25-33 as best understood) are rejected under 35 U.S.C. 102(e) as being anticipated by

U.S. Patent No. 7.092,354 B2 to Jensen.

As concerns claims 1, 22, 34 and 46 identifying a network element that has failed

(column 2, lines 47-50); selecting a substitute network element (column 2, lines 41-42; standby

node) from among a pool of one or more available network elements (column 2, lines 41-42);

receiving connection configuration information from the identified network element (column 6,

lines 48-49); based on the connection configuration information, re-configuring the substitute

network element (column 2, lines 47-52; column 4, lines 36-42; column 7, lines 9-11) and one or

more switch devices (column 2, lines 56-58; column 1, lines 56-59) associated with the identified

network element, wherein the re-configuring causes the one or more switch devices to change

one or more connections from the identified network element to the substitute network element

(column 2, lines 56-58).

As concerns claims 2, 23, 35 and 47 the identified network element is one of a plurality

of network elements in a cluster that is associated with the first and second network switches

(column 2, lines 41-42; column 3, lines 11-12).

As concerns claims 3, 24, 36 and 48 a cluster manager (column 4, lines 36-42) is

communicatively coupled to a cluster comprising a plurality of active network elements, the pool

of one or more available network elements, a first network switch and a second network switch

(column 2, lines 41-42; column 1, lines 56-59; column 3, lines 11-12).

As concerns claims 4, 14, 25, 37 and 49 reconfiguring comprises sending a trigger event (column 6, lines 23-26) to the substitute network element that causes the substitute network element to retrieve a configuration over a network connection (column 6, lines 39-45).

As concerns claims 5, 15, 26, 38 and 50 reconfiguring comprises dynamically reconfiguring the selected network element as a logical clone of the identified network element (column 6, lines 47-51).

As concerns claims 6, 16, 27, 39 and 51 associating the identified network element with the pool of available network elements (column 2, lines 41-42).

As concerns claims 7, 17, 28, 40 and 52 sending an initial configuration to the substitute network element (column 6, lines 48-49); sending a partial accumulated configuration to the substitute network element (column 6, lines 60-column 7, line 10); and sending instructions that cause the identified network element to reboot (column 7, lines 12-13) based on a configuration setting of a cluster associated with the identified network element.

As concerns claims 9, 18, 30, 42 and 54 each of the network elements is a network aggregation device or a network access server (column 1, lines 56-59).

As concerns claims 10, 19, 31, 43 and 55 repeating for multiple concurrently failed network elements (column 7, lines 12-23; column 3, lines 11-12).

As concerns claims 11, 20, 32, 44 and 56 receiving a message specifying a failure of a network element over an event bus on which the network elements publish events and on which a cluster manager subscribes to events (column 6, lines 39-42); based on the message, identifying the network element that has failed (column 6, lines 39-42).

As concerns claim 13, receiving a first user input (column 4, lines 36-42; user input in the form of programmed instructions) that defines a cluster comprising a first network switch, a plurality of network elements and a second network switch (column 2, lines 41-42; column 1, lines 56-59); receiving a second user input (column 4, lines 36-42; user input in the form of programmed instructions) that specifies one or more of the network elements as a pool of available network elements (column 2, lines 41-42); identifying a network element that has failed (column 2, lines 47-50); selecting a substitute network element from among a pool (column 2, lines 41-42); re-configuring the first and second network switches (column 2, lines 56-58; column 1, lines 56-59), wherein the re-configuring causes the first and second network switches to change one or more connections from the identified network element to the substitute network element (column 2, lines 56-58).

Claim Rejections - 35 USC § 103

6.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7.   Claims 12, 21, 33 (as best understood), 45 and 57 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 7,092,354 B2 to Jensen as applied above in view of U.S. Patent No. 6,456,600 to Rochberger et al.

Jensen '354 does not explicitly disclose an ATM switch.

Rochberger et al. '600 teach an ATM switch (column 1, lines 26-30).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the system of Jensen '354 with an ATM switch, as taught by Rochberger et al. '600, in order to provide a switch for transferring various network traffic at high speeds (Rochberger et al. '600: column 1, lines 26-28).

8.   Claims 8, 29 (as best understood), 41 and 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 7,092,354 B2 to Jensen as applied above in view of U.S. Patent No. 5,751,967 to Raab et al.

Jensen '354 disclose associating the network elements in a cluster with a first switch and a second switch and the network elements are reserved in the pool of available network elements (column 2, lines 41-42; column 2, lines 56-58; column 1, lines 56-59; column 4, lines 36-42; user input in the form of programmed instructions).

Jensen '354 does not explicitly disclose the user input is a graphical user interface.

Raab et al. '967 teach a graphical user interface (GUI) (column 6, line 18).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the system of Jensen '354 with a GUI, as taught by Raab et al. '967, to provide a user input that is easily accessible to a user since it is graphical in nature.
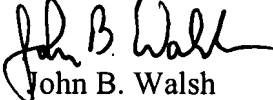
Conclusion

9.   The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO 892.

10.   Any inquiry concerning this communication or earlier communications from the examiner should be directed to John B. Walsh whose telephone number is 571-272-7063. The examiner can normally be reached on Monday-Thursday from 7:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Zarni Maung can be reached on 571-272-3939. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

John B. Walsh
Primary Examiner
Art Unit 2151